

INSURANCE

Dave Heineman
Governor

Bruce R. Ramage
Director

A Message from the Director....



Bruce R. Ramage

Transitioning to NAIC's State Based Systems

The Department's transition to NAIC's State Based Systems (SBS), effective July 16, 2012, allows it to become increasingly more efficient in responding to Nebraska consumers, insurance producers and insurance companies while holding down our costs. The initial phase provides our insurance producers with key online benefits and resources from SBS such as real-time Continuing Education (CE) online tracking tools. These tools will be accessible through the Department of Insurance website at www.doi.ne.gov, or the SBS website at www.statebasedsystems.com.

I will be joining SBS and NIPR at three Nebraska Industry Days for training sessions scheduled to be held in Grand Island, Omaha, and Lincoln. Attendance at one of these **free** informative sessions will earn you three Continuing Education General Credits while at the same time provide the training needed to effectively interact with the Department through online tools provided by SBS and NIPR. These training sessions focus on process changes such as online license printing, education transcript printing, uploading of course completions, license status verifications, etc., that affect licensees, license administrators and continuing education providers. I'm hopeful that these sessions will help to make the transition to SBS as smooth as possible. Please note that registration must be completed in advance—there is no onsite registration. Logistics for the session dates listed below are included with the registration form at <http://www.cvent.com/d/pcqz9k>.

| | | |
|----------------|------------|--------------|
| July 24 | 9:00-11:30 | Grand Island |
| July 25 | 9:00-11:30 | Omaha |
| | 1:00-3:00 | Omaha |
| July 26 | 9:00-11:30 | Lincoln |

I hope you'll also plan to join us at an Open House at the Department on July 26, from 1:00-3:00 p.m., to celebrate our completion of the implementation of SBS and enjoy the opportunity to visit with Department, NAIC, and NIPR staff.

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FRAUD DIVISION

Audit and Prevention Practices Necessary to Combat Fraud

Insurance fraud continues to provide a lucrative source of income for organized criminals. The schemes may vary, but the motive remains the same—money! Some recent cases include:

Nebraska: An alleged investment scheme resulted in more than 250 individuals/entities being defrauded out of \$29 million.

Nevada: Organized criminals have successfully scammed insurers 50% of the time by using a technique to swindle insurance companies out of commissions believed to be due for life insurance policies.

Michigan: Individual allegedly opened insurance agencies and hired 12 unlicensed producers through which 2,200 bogus automobile policies were sold with \$492,316 collected in undue premiums.

Insurance companies are reminded to have audit and prevention practices in place to combat this type of professional criminal activity. Insurance fraud awareness can be a great tool in combating insurance fraud; however, when organized criminal activity is involved this awareness becomes less of a deterrent.

Court Actions

United States District Court - District of Nebraska, 4:10-CR-03129

United States of America v. Stella M. Levea, James P. Masat, Kenneth W. Mottin

Kenneth W. Mottin, a principal involved with First Americans Insurance Service, Inc., located in Grand Island, Nebraska, recently pled guilty to mail fraud in a scheme which defrauded over 250 investors out of \$29 million. Agencies involved in the criminal investigation include the Federal Bureau of Investigation, the Nebraska State Patrol, the Nebraska Department of Banking and Finance, and the Insurance Fraud Prevention Division. Mr. Mottin is scheduled to be sentenced on September 6, 2012.

United States District Court - District of Nebraska, 4:11-CR-03143

United States of America v. Mark Koehler

Mark Koehler was charged in federal court after being suspected of bilking over \$1.4 million from private and public health insurance programs, over a three-year period, while working as a business manager for Heartland Physical Therapy. Mr. Koehler was also charged with defrauding a local bank as part of the ongoing scheme. Mr. Koehler was sentenced to three years in prison and upon release will receive up to five years of supervised probation. Mr. Koehler was also ordered to pay over \$1.8 million in restitution to Bank First and 34 health insurance programs.

Garden County District Court, CR11-3

State v. Carmen Thompson

Carmen Thompson was charged with one misdemeanor count of false reporting to a law enforcement officer and one felony count of insurance fraud after reporting a bogus vehicle vandalism claim to her insurance company. Ms. Thompson was found guilty on both counts and sentenced to five years of intensively supervised probation plus related costs, serve 50 hours of community service, serve 90 days in the Garden County jail, and pay court costs.

Cedar County Court, CR12-14**State v. Kyle Dore**

Kyle Dore filed a claim with his automobile insurance company alleging he damaged his vehicle as the result of striking a deer. Mr. Dore's claim unraveled when it was discovered he indicated on a social networking site that the vehicle had prior damage. Mr. Dore was charged with attempted insurance fraud, a Class IV felony, even though the insurance company denied the claim upon discovering the previous damage. Mr. Dore pled guilty to an amended charge of attempted insurance fraud, a Class III misdemeanor, and was fined \$500 plus court costs. Mr. Dore was also ordered to pay restitution to the State of Nebraska for its investigative costs.

Douglas County District Court, CR11-821**State v. Constance I. Lindzy**

Constance Lindzy was charged in Douglas County with one count of insurance fraud. Ms. Lindzy was accused of adding comprehensive coverage to an automobile policy, which previously only had liability coverage, sometime after an accident had occurred. Ms. Lindzy then reported a property damage accident and provided an incorrect date of loss in order to have the insurance company pay for the vehicle repairs and car rental reimbursement. Ms. Lindzy was convicted of a Class IV felony and ordered to serve five years of supervised probation plus \$1,800 in associated fees, \$9,200 in restitution to the insurance company, and court costs.

Holt County District Court, CR11-47**State v. Robert J. Malone**

Robert Malone was charged with attempting to defraud an insurer after submitting bogus documentation, pursuant to a claim, in an amount more than \$1,500. Upon accepting a guilty plea to a Class III felony, District Court Judge Mark Kozisek ordered Mr. Malone to pay a \$2,500 fine, \$183.70 in court costs, and \$616.90 for costs associated with the Insurance Fraud Prevention Division's investigation.

Lincoln County Court, CR11-2268**State v. Anthony R. Welch**

Anthony Welch was charged in Lincoln County with one felony count of insurance fraud. Mr. Welch was accused of purchasing a vehicle with pre-existing hail damage and then submitting a claim to his insurance company alleging the damage occurred after he took possession of the vehicle. Mr. Welch pled no contest to a lesser charge and was fined \$250 and costs associated with prosecution.

Sarpy County District Court, CR11-335**State v. Carl R. King**

After leaving the scene of an automobile accident, Carl R. King called his insurance company and reported the theft of the vehicle and the subsequent vehicle's involvement in a hit-and-run accident. After a thorough investigation by the Omaha Police Department and the Insurance Fraud Prevention Division, it was discovered Mr. King was actually the driver of the vehicle when it was involved in the accident. Mr. King was cited for leaving the scene of an accident and charged with one count of insurance fraud. Mr. King plead guilty to an amended charge and was fined \$500 and ordered to pay \$121 in court costs for his unsuccessful attempt to claim vehicle damages exceeding \$4,900 from his insurance company.

PROPERTY & CASUALTY DIVISION

Staff Updates

Some lines of insurance that staff will be handling will be reassigned and posted to our website.

Gina Goodro will be transferring internally within the Department from our division to the position of Insurance Education Analyst in the Producer Licensing Division. As a result of her transfer, as well as the additional filings that will be received as a result of the passage of LB 1054, some of the lines of insurance that staff will be handling will be reassigned. Once the reassignments have been made, they will be posted to our website under Property Casualty Guidelines and Information found at www.doi.ne.gov/pc/guidelin.htm.

Filing Review Process

A chart clarifying the filing review process associated with each line can be found on our website.

As most of you know, we have revised the filing review process to now allow the majority of filings received to be reviewed on a File and Use Basis. A chart that clarifies the filing review process associated with each line can be found on the Department's website at www.doi.ne.gov/pc/pc_lines.pdf.

SENIOR HEALTH INSURANCE INFORMATION PROGRAM (SHIIP)

Nebraska SHIIP Ranks Among Top SHIP Programs in Country

Nebraska has consistently ranked among the top SHIP programs in the country. In 2011, the Nebraska SHIIP counseled over 26,000 Nebraska Medicare beneficiaries, with nearly 9,000 Medicare Part D enrollments completed. The Nebraska SHIIP also conducts education events across the state, hosting over 1,400 in 2011. Alicia Jones, SHIIP Program Director, recently received an award for continuing the program's success, with very limited staff, during the extended illness and subsequent passing of the previous director.

CONSUMER AFFAIRS DIVISION

Medicare Supplement or Medicare Advantage Plan-- But Not Both

CMS continues to see situations where a Medicare member is carrying two health policies—the Medicare Advantage plan and Medicare Supplement.

The Centers for Medicare & Medicaid Services (CMS) has informed the Department that it continues to encounter situations where a producer sells a Medicare member, who is already enrolled in a Medicare Advantage plan, a Medicare Supplement product resulting in the member carrying two health policies—Medicare Supplement and the Medicare Advantage plan.

There a mistaken impression that enrolling in a Medicare Supplement plan will automatically cancel a client's Medicare Advantage plan.

CMS reports that producers have been enrolling clients in Medicare Supplement plans with the mistaken impression that the enrollment itself will automatically cancel the client's Medicare Advantage plan enrollment. Pursuant to the National Association of Insurance Commissioners' (NAIC) Model Regulation guidance, the clients must proactively terminate their coverage with their Medicare Advantage plan. It is not for the producer to promise to take this action, nor does the termination from the Medicare Advantage plan happen automatically when the member purchases a Medicare Supplement product. Sometimes producers incorrectly tell their clients that they will terminate the Medicare Advantage plan coverage.

Medicare Supplement and Medicare Advantage plans never coordinate with each other—Medicare Supplement plans only coordinate with original Medicare.

When the Medicare Advantage enrollment remains in place after a Medicare member enrolls in a Medicare Supplement product, the member pays two premiums but only the Medicare Advantage plan is effective, essentially "blocking" the Medicare Supplement plan from providing coverage. Medicare Supplement and Medicare Advantage plans never coordinate with each other. Medicare Supplement plans, of course, only coordinate with original Medicare. The typical fix for this double enrollment by CMS caseworkers is to retro-terminate the member from the Medicare Advantage plan due to producer or plan error. This kind of correction is made only when errors by plan or plan producers have been discovered, however, it is sometimes many months after-the-fact. There have been some unfortunate cases where Medicare members have paid double premiums—Medicare Advantage plan and Medicare Supplement plan—for more than a year or two. CMS

Insurers and producers are reminded to be fully aware of what is happening in the area of CMS casework involving Medicare Supplement plan coverage.

reports that the volume of these cases is not overwhelming, but they continue to happen too frequently and the monetary impact on Medicare members is sometimes significant.

The Department would like to remind insurers and producers to be fully aware of what is happening in the area of CMS casework involving Medicare Supplement plan coverage. The Department wants to ensure producers are educated about performing due diligence in making sure their Medicare Advantage plan clients understand it is the Medicare member's responsibility to terminate the Medicare Advantage plan coverage when a decision has been made by the client to purchase a Medicare Supplement product.

Please feel free to contact the Consumer Affairs Division, if you have questions.

PRODUCER LICENSING DIVISION

Staff Updates

The division is pleased to announce the addition of three new staff members. **Beth Krutz** and **Lori Bruss** recently joined the licensing division filling the positions of retirees, Janet Roberts and Phyliss Bourne. In addition, **Gina Goodro** has transferred internally and will serve as the Insurance Education Analyst.

Annuity Training Requirements for Producers

On July 6, 2012, Director Ramge issued CB-128 for the purpose of responding to inquires the Department has received with regard to annuity training requirements for insurance producers with a life line of authority.

The Nebraska Unicameral enacted the most recent revisions to the NAIC Model, which was adopted by the NAIC on March 28, 2010, in sections 21 through 29 of LB 887 during the 2012 legislative session. Those sections of LB 887 amended our current Nebraska Protection in Annuity Transactions Act ("Act"), Neb.Rev.Stat. §§44-8101 to 44-8107 and become operative on July 19, 2012. Copies of those statutes are available at the Nebraska Legislature's website located at <http://nebraskalegislature.gov/>.

The new annuity training education requirements for insurance producers who sell annuity products are:

- An insurance producer who holds a life insurance line of authority on the July 19, 2012 operative date of LB 887, who desires to solicit the sale of annuity products, shall complete, within six months after July 19, 2012, a one-time, four-credit training course approved by the Nebraska Department of Insurance and provided by a Nebraska-approved continuing education provider.
- Individuals who obtain a life insurance line of authority on or after July 19, 2012 may not engage in soliciting the sale of annuity products until the required annuity training course has been completed.

Additionally, insurance companies and producers with a life line of authority are reminded that an insurance producer shall not solicit the sale of an annuity product unless the insurance producer has adequate knowledge of the product to recommend the annuity and the insurance producer is in compliance with the insurer's standards for product training. An insurance producer may rely on insurer-provided, product-specific training standards and materials to meet this requirement.

Non-resident insurance producers soliciting the sale of annuity products in the State of Nebraska will also be required to complete the annuity training requirement. The satisfaction of another state's annuity training requirements by a Nebraska non-resident producer will be deemed to satisfy the training requirements of our state if the other state's training requirements are substantially similar to Nebraska's requirements under Section 28 of LB 887, which has been assigned to [Neb.Rev.Stat. §44-8108](#) in the Act.

Producers who took an annuity training course prior to July 19, 2012, meet the training requirement provided that the course is in compliance with the training requirements of our state under [Neb.Rev.Stat. §44-8108](#).

Topics that must be covered by the annuity training course are set out in [Neb.Rev.Stat. §44-8108](#) and shall include information on (1) The types of annuities and various classifications of annuities; (2) Identification of the parties to an annuity; (3) How fixed, variable and indexed annuity contract provisions affect consumers; (4) The application of income taxation of qualified and nonqualified annuities; (5) The primary uses of annuities; and (6) Appropriate sales practices and requirements for replacement and disclosure. The annuity training requirement is not a continuing education requirement, but rather a training requirement for soliciting the sale of an annuity product.

The Department of Insurance will not track the training course completions of producers. It is the insurer's responsibility to verify that the producer has completed the training. Approved training courses are listed on the Department's website at www.doi.ne.gov/license/ce_index.htm.

Bulletin CB-128 is printed in question and answer format. The full text of the bulletin can be found at www.doi.ne.gov/bulletin/cb128.pdf.

LEGAL DIVISION

New Nebraska Insurance Statutes Take Effect

The Nebraska Legislature passed a number of bills in 2012 affecting insurance consumers, companies, and producers. These bills take effect July 19, 2012 unless otherwise noted.

LB 887, introduced by Senator Rich Pahls, Chairman of the Banking, Commerce, and Insurance Committee, at the request of the Director, amends a number of articles in the insurance code affecting Nebraska's insurance community.

Of particular interest to insurance producers and insurers offering annuity products, LB 887 adopted the most recent amendments to the National Association of Insurance Commissioners Model Act on Annuity Suitability. Adoption of these amendments will allow insurers a uniform compliance standard and will allow Nebraska domestic insurers more flexibility to issue these products under federal law. For transactions occurring after January 1, 2013, the changes clarify that the insurer is responsible for compliance with the model's requirements even if the insurer contracts out to a third party to perform those requirements. The changes also require the review of all recommended annuity transactions in a manner the carrier considers appropriate to ensure compliance with this requirement to better protect consumers from unsuitable sales and abusive sales and marketing practices. Under the law, insurance producers will have new product-specific training requirements. The law requires a minimum of four hours of continuing education. Insurance producers licensed after July 19, 2012 must have this training before engaging in a sale of annuity products. Insurance producers licensed as of July 19, 2012 have six months to complete that training.

LB 887 amended the Nebraska Life and Health Insurance Guaranty Association Act to bring Nebraska law into line with national standards. Among other changes, the bill set claims coverage levels more precisely, instead of the current system in which all "health insurance benefits" are covered at \$500,000 and adopts limits of \$300,000 for disability and long term care, and \$100,000 for an "other" category. Limits for annuity and structured settlements would be increased from \$100,000 to \$250,000 to correspond with limits set by the FDIC for covered bank deposits, hopefully reducing the possibility for consumer confusion. The new law will also completely exclude coverage for viatical settlement contracts, which have been excluded from coverage by Nebraska Supreme Court case law and for Medicare Parts C and D coverages.

As regards the financial regulation of insurers, the Legislature amended the Special Purpose Financial Captives statute, which allows Nebraska domestic life insurers to finance and maintain "redundant" reserves to allow a special purpose financial captive to use a guaranty of a parent instead of a letter of credit and allow the director to consider additional factors in determining whether to issue a certificate of authority.

The Legislature also adopted the NAIC Model Act amendments to the Holding Company Act. The Holding Company System Act regulates the financial interactions between insurers and their parent and affiliate companies to prevent reserves and other insurer resources from being

inappropriately diverted from the insurer which could result in the insurer’s obligations being transferred to the largely state-funded guaranty funds. The act also governs service agreements and financial transfers between insurers and their parent and affiliate entities. This is in response to the need to modernize holding company regulations to respond to criticism from international regulators and insurers. The NAIC has undertaken amendments to the Holding Company Act to bring it up-to-date and tighten its provisions in response to specifically identified flaws in the act.

In other legislation of note to insurers and insurance producers, the Legislature adopted **LB 943**, adopting the Insured Homeowners Protection Act allowing a person who has entered into a written contract with a residential contractor to provide goods or services to be paid from insurance proceeds to cancel the contract under certain circumstances, and provide that a residential contractor shall not promise to rebate any portion of an insurance deductible as an inducement to the sale of goods or services.

LB 1064 allows disability insurance to be purchased from a nonadmitted insurer if the disability insurance has a benefit limit in excess of any benefit available from an admitted insurer.

LB 882 requires a group or individual health policy, certificate, contract, or plan to provide coverage for a prescribed, orally administered anticancer medication on a basis no less favorable than intravenously administered or injected cancer medications that are covered as medical benefits. LB 882 also provides that the section terminates December 31, 2015.

The full text of the legislation is available at www.nebraskalegislature.gov. For complete copies of the acts, enter the bill number in the Search Current Bills box and select “slip law”.

Actions Taken Against Companies

| CAUSE NO. | ALLEGATION | DISPOSITION |
|--|--|---|
| C-1947 The Prudential Life Insurance Company Group (Insurance Group) | Nebraska participated in the Multi-State Targeted Market Conduct Examination led by the Pennsylvania Insurance Department. | Multi-State Settlement Refer to lead state for details 3/16/2012 |
| C-1949 PMI Mortgage Insurance Company Arizona | Company placed in receivership in its domiciled state. | Order Certificate of authority suspended 4/6/2012 |
| C-1954 MetLife Inc. (Insurance Group) | Nebraska participated in the Multi-State Market Conduct Examination led by Illinois and Florida. | Multi-State Settlement Refer to lead states for details 5/14/2012 |

Case Summaries

Spitz v. T.O. Haas Tire Co., 283 Neb. 811 (2012)

Spitz sought workers' compensation benefits after the death of Roger McCannon, who died in an accident arising out of and in the course of his employment with T.O. Haas Tire Company. Spitz sent a demand letter to T.O. Haas insurer for indemnity payments to herself as McCannon's common-law wife and their daughter Danielle Spitz-McCannon. The trial judge determined Spitz was not McCannon's common-law spouse. Because a couple cannot create a common-law marriage by agreement or cohabitation in Nebraska, Spitz had to prove she had a valid common-law marriage under Colorado law in 1999 prior to moving to Nebraska.

The couple lived together while attending junior college in Colorado, and their daughter, Danielle, was born in 1991. In 1998, McCannon gave Spitz a wedding ring and in 1999 they moved to Nebraska together. Spitz and McCannon never used the same name in any contracts or writings, and they never filed joint tax returns. Spitz filed as head of household on her income tax returns, represented herself as single on deeds of trust, and they had separately titled vehicles. The couple never discussed health or life insurance benefits and neither had a will. Spitz testified she believed she was married in Colorado, but not in Nebraska because she thought Nebraska did not recognize common-law marriages.

The trial judge ruled that Danielle was entitled to benefits but dismissed Spitz's claim that she was McCannon's surviving spouse, finding that Spitz failed to meet the burden to prove that the marriage existed by "clear, consistent, and convincing" evidence. Living together and acting like a married couple was not enough to overcome the fact that the couple held themselves out as single persons, not married persons.

The Nebraska Supreme Court affirmed the trial court's ruling. The trial court held correctly that the *People v. Lucero*, 747 P.2d 660 (Colo. 1987) standard states that a presumption does not exist in favor of a finding of marriage. There must be evidence that shows the parties' intent to have a marital relationship. Evidence that friends and family members assumed the couple had a common-law marriage or believed they behaved like a married couple is insufficient to create a common-law marriage under *Lucero*. The facts show that Spitz and McCannon did not intend to have a marital relationship and the appellate court was not wrong in finding that a common-law marriage did not exist. Thus, Spitz was not entitled to workers' compensation benefits.

Pittman v. Western Engineering Co., 283 Neb. 913 (2012)

While working as an employee of Western Engineering Company (Western) on a resurfacing project on Interstate 80, Robin Pittman was killed when dual wheels came loose from the left back axle of the trailer, rolled down the center median of the Interstate, and struck her. Her husband, David, arrived at the scene and saw Robin was dead.

David accepted, as Robin's surviving spouse and dependent, weekly workers' compensation death benefits of \$602.32 for approximately 38 weeks. Western, its' insurer, and David filed an "Application for an Order Approving Lump Sum Settlement and Release" in the Workers' Compensation Court, which awarded David a lump sum of \$400,000. In exchange, the application stated there would be no more weekly death benefits and that upon the payment, Western and its insurer would be "fully discharged from all further liability under the Nebraska Workers' Compensation laws, as amended [,] on account of the fatal accident of 9/8/2009 to Robin...and shall be entitled to duly executed release." The Workers' Compensation Court approved the application in its June 28, 2010 order.

David brought this action against Western and Evert Falkena, an employee of Western who allegedly was negligent in maintaining the semi-trailer truck, in district court, alleging bystander negligent infliction of emotional distress. David claims the fatal injuries to Robin caused immediate and extreme mental anguish and shock to him and caused emotional distress so severe that no reasonable person should be expected to endure it. The district court determined David's action was barred by the exclusivity provisions of the Nebraska Workers' Compensation Act. The court held the lump-sum settlement which David entered into constituted a full and final release of all claims or causes of action which David sustained by reason of the death of Robin. The district court dismissed his complaint with prejudice, but stated in their order that if the case was not barred and the dismissal was in error, then there were questions of fact that existed.

Case law provides that an individual can be an employee of an entity but still sue that entity in district court if their recovery is not covered under or barred by the Nebraska Workers' Compensation Act. David argues in this appeal that with the exception of first responders, purely psychological damages are not recoverable under the definition of "injury" in the Nebraska Workers' Compensation Act, Neb.Rev.Stat. §48-151(4). He asserts, because his claim is limited to emotional injuries and thus not covered by the statute, the exclusivity provisions do not bar his tort claim. Appellees argue that when David accepted the lump-sum payment and signed a release fully discharging them from all further liability, subsequent lawsuits arising from Robin's death are prohibited.

David argued that his present negligence case did not "arise" from Robin's injuries as used in §48-148. The Nebraska Supreme Court held that David's claim arises from Robin's death because had the injury and death not occurred, the emotional distress claim would not have arisen. There is a clear, rational nexus between Robin's death and David's claim, and thus it arises from Robin's injury under §48-148.

The Nebraska Supreme Court affirmed the lower court's decision and held that David's claim was barred by the employer immunity in §48-148. The exemption given to employers also extends to the employer's employees pursuant to §48-111 and therefore, David's claim against Falkena is also barred.

D&S Realty, Inc. v. Markel Insurance Company, 284 Neb. 1, 2012

A building owned by D&S Realty, Inc., was damaged by water burst pipes. The building was insured by Markel through a standard indemnity policy, with additional coverage for repair and replacement costs in the event of a covered loss. A provision of the clause stated that Markel would not pay on a replacement cost basis unless the property was actually repaired or replaced. At the time of the claim, D&S was working on renovations with less than 5% of the building occupied. Markel was aware of the vacancy and continued to accept premiums.

The “Loss Conditions” section of the policy included a “Vacancy” clause which stated that Markel would not pay for water damage if the building was vacant for more than 60 days preceding the loss. “Vacant” was defined as 70% or more of the square footage was not rented or used. The clause stated that buildings under construction or renovation are not considered vacant; however neither “construction” nor “renovation” were defined in the policy. Markel generally denied coverage for the claimed losses because the building was more than 70% vacant at the time of the loss. D&S brought a breach of contract action against Markel.

The district court returned a verdict for Markel, determining the building was “vacant” and they were therefore not liable under the policy. D&S appealed. The Nebraska Supreme Court reversed the district court’s determination based on §44-358 holding that the vacancy clause was a condition subsequent, and therefore the vacancy could not be used to avoid liability unless the vacancy contributed to the loss. The court remanded the case for further proceedings to determine whether the vacancy contributed to the loss.

On remand, the jury returned a verdict for D&S, stating that the vacancy did not contribute to the loss and determined the amount of damages to be \$784,421.89. Markel timely appealed the final judgment arguing their duty to pay replacement costs never became due because D&S failed to fulfill their requirement to repair or replace the property and that their good faith denial of coverage does not excuse D&S from performing their condition.

D&S relied on *Bailey v. Farmers Union Co-op Ins. Co.*, 1 Neb. App. 408 (1992), for the assertion that denial of coverage excuses the repair/replace condition of replacement cost coverage. The doctrine of prevention says that the performance of a condition precedent is waived when the party is told that their performance will not secure the other party’s performance. The doctrine of prevention is not limited to bad faith denials of liability. In this case, the denial of liability by the insurer prevented the insured’s performance of the repair/replace condition. D&S argued that the denial of liability not only excused the repair/replace condition, but actually prevented their performance of the condition.

The Nebraska Supreme Court did not support Markel’s assertion that D&S was required to perform the repair/replace condition despite the denial of liability. However, whether the interference by one party amounts to prevention is a question of fact for the particular circumstances and the court noted that the jury was never given the opportunity to determine

the factual questions necessary to make a decision. The court was not willing to decide the factual question of whether D&S was actually prevented from performing the repair/replace condition by the denial of liability by Markel. The court held that Markel was liable under the policy for the water damage, and reversed and remanded again to determine whether D&S is entitled to actual cash value or replacement costs.

Regulation Updates

Company Bulletins

CB-128 - ANNUITY TRAINING FOR PRODUCERS WITH A LIFE LINE OF AUTHORITY

CB-128 was issued on July 6, 2012 for the purpose of responding to inquiries received by the Department with regard to annuity training requirements for insurance producers with a life line of authority. The contents of the bulletin are in question and answer format. A copy of CB-128 can be found on the Department's website at www.doi.ne.gov/bulletin/cb128.pdf.

Proposed Amended Regulations

TITLE 210, NEB. ADMIN. R. & REG. 10 - UNINCORPORATED MUTUAL ASSOCIATIONS

The proposed amendments reconcile two inconsistencies between the regulation and Nebraska law. First, the amendment eliminates the regulation's requirement that unincorporated mutual association filings include a five dollar filing fee. Second, the proposed amendment removes a provision which prohibits unincorporated mutual associations from paying in excess of five dollars per day to any officer or employee for services performed. Current Nebraska law allows unincorporated mutual associations to pay officers or employees a maximum of ten dollars per day. A public hearing was held on June 14, 2012.

TITLE 210, NEB. ADMIN. R. & REG. 44 - SCOPE OF COVERAGE TO BE OFFERED BY THE NEBRASKA COMPREHENSIVE HEALTH INSURANCE POOL REGULATION

The proposed amendment refines the benefit for the scope of coverage offered to an insured on the Comprehensive Health Insurance Pool's plan. Specifically, the amendment will remove the allotted time for coverage of outpatient rehabilitation services provided to cardiac and pulmonary patients, and will allow services to be provided as medically necessary. A public hearing has been scheduled for September 6 at 10:00 a.m., in the 5th Floor Conference Room of the Terminal Building, 941 O Street, Lincoln, Nebraska.

TITLE 210, NEB. ADMIN. R. & REG. 58 - MOTOR VEHICLE SERVICE CONTRACT REIMBURSEMENT INSURANCE

The proposed amendments streamline the filing requirements for motor vehicle service contracts (MVSCs). Currently, MVSC providers are responsible for filing a copy of the MVSC form with the Department prior to use, while reimbursement insurers are responsible for filing a copy of the MVSC reimbursement policy with the department prior to use. Both entities must file a "Notice of Filing" form provided by the department. The proposed amendment will require only the MVSC provider to file one copy of the MVSC form, the corresponding reimbursement policy, and the "Notice of Filing" form. The

amendments also clarify the department's definition of "conspicuously" as it applies to the MVSC disclosure requirements. Finally, the proposed amendments place an additional requirement on MVSC providers who cover vehicle protection products. The proposed amendment requires MVSC providers filing contracts related to vehicle protection products to provide an analysis outlining why the filed contract is not governed by Magnuson-Moss Warranty—Federal Trade Commission Improvement Act. A public hearing has been scheduled for August 15 at 1:30 p.m., in the 5th Floor Conference Room of the Terminal Building, 941 O Street, Lincoln, Nebraska.

NECHIP Rate Hearing Scheduled

A public hearing on a proposed rate adjustment of the Nebraska Comprehensive Health Insurance Pool premium rates has been scheduled for September 6, 2012, at 10:30 a.m., at the Nebraska Department of Insurance, Terminal Building, 941 O Street, Lincoln, Nebraska. The purpose of the hearing is to provide an opportunity for public comment on the proposed rate adjustment.

EXAMINATION DIVISION

Financial Examinations Completed During Second Quarter, 2012

Company

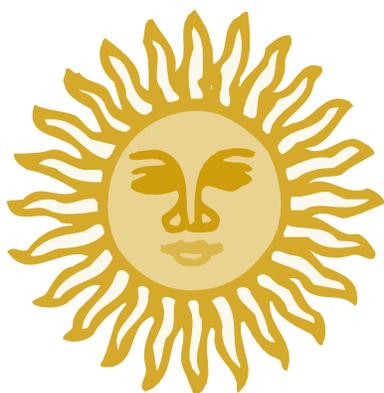
Ability Insurance Company
American Republic Corp Insurance Company
Chicago Title Insurance Company
Commonwealth Land Title Ins Company
Cornhusker Life Insurance Company
Cornhusker Mutual Life Assn I
Cornhusker Mutual Life Assn III
First Landmark Life Insurance Company
FirstComp Insurance Company
Mutual of Omaha Insurance Company
Omaha Insurance Company
Omaha Life Insurance Company
Omaha Reinsurance Company
Preferred Professional Insurance Company
United of Omaha Life Insurance Company
United World Life Insurance Company
World Corp Insurance Company
The World Insurance Company

Financial examination reports become public documents once they have been placed on official file by the Department. The most current report of financial examination can now be found on the Department's website at www.doi.ne.gov. Copies can be obtained from the Department at a cost of \$.50 per page.

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Lincoln, Nebraska 68501-2089

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Department Calendar
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- September 3: Department Closed - Labor Day
- October 8: Department Closed - Columbus Day
- November 12: Department Closed - Veterans' Day Observed